

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TED J. GRIMES, )  
Petitioner, ) CASE NO. C05-462JLR  
v. )  
ALICE PAYNE, ) ORDER DENYING PETITIONER'S  
Respondent. ) MOTION FOR RELEASE

On March 22, 2005, petitioner presented to this Court for filing a petition for writ of habeas corpus under 28 U.S.C. § 2254. The petition was thereafter filed and ordered served on respondent. On April 22, 2005, petitioner filed a motion seeking release from custody pending a final decision on the merits of his petition. It is petitioner's motion for release which is currently before this Court for consideration. Respondent has filed a response in opposition to petitioner's motion and petitioner has filed a reply brief in support of his motion. The Court, having considered the submissions of the parties, does hereby find and ORDER as follows:

(1) Petitioner's motion for release from custody, either on his personal recognizance or on bail, pending a final decision on the merits of the instant federal habeas petition (Dkt. No. 10) is DENIED.

**ORDER DENYING PETITIONER'S  
MOTION FOR RELEASE - 1**

1 Bail for a prisoner seeking post-conviction release is reserved for "extraordinary cases  
 2 involving special circumstances or a high probability of success." *United States v. Mett*, 41 F.3d  
 3 1281, 1282 (9th Cir. 1994)(quoting *Land v. Deeds*, 878 F.2d 318 (9th Cir. 1989)). Petitioner  
 4 fails to establish either special circumstances or a high probability of success on the merits of his  
 5 federal habeas petition.

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 7 Petitioner indicates in his petition that the judgment under attack is a 1999 King County  
 8 Superior Court judgment entered following his convictions on theft charges. However, the  
 9 single claim set forth in the petition concerns the Washington Supreme Court's refusal to grant  
 10 petitioner release from custody under Rule 16.15 of the Washington Rules of Appellate  
 11 Procedure pending a determination on the merits of his personal restraint petition.<sup>1</sup> Specifically,  
 12 petitioner asserts that the refusal of the state courts to grant him release from custody pending a  
 13 determination on the merits of his personal restraint petition violates his rights under the Fifth,  
 14 Sixth, and Fourteenth Amendments.

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 16 While petitioner contends that the refusal of the state appellate courts to grant him  
 17 release pursuant to a state procedural rule violates his federal constitutional rights, petitioner has  
 18 no apparent right to release during collateral proceedings.<sup>2</sup> Moreover, the Ninth Circuit has held  
 19 that habeas relief is not available to redress state post-conviction errors. *See Ortiz v. Stewart*,

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 22 <sup>1</sup> Petitioner's personal restraint petition, which presents a challenge to his exceptional  
 23 sentence under *Blakely v. Washington*, 124 S. Ct. 2531 (2004), is currently stayed pending a  
 24 decision by the Washington Supreme Court in another case

25 <sup>2</sup> Rule 16.15(b) of the Washington Rules of Appellate Procedure provides that an  
 26 appellate court of the state *may* release a petitioner on bail or personal recognizance "if release  
 prevents further unlawful confinement and it is unjust to delay the petitioner's release until the  
 petition is determined."

1 149 F.3d 923, 939 (9<sup>th</sup> Cir. 1998)(*citing Carriger v. Stewart*, 95 F.3d 755, 763 (9<sup>th</sup> Cir. 1996),  
2 *vacated on other grounds*, 132 F.3d 463 (1997)); *Franzen v. Brinkman*, 877 F.2d 26 (9<sup>th</sup> Cir.  
3 1989). As petitioner's single federal habeas claim appears to constitute a challenge to an alleged  
4 error in his state post-conviction proceedings, petitioner has not presented a cognizable claim for  
5 relief in these proceedings. Petitioner is therefore unlikely to prevail in these federal habeas  
6 proceedings and, thus, he is not entitled to release pending final resolution of his petition.  
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8 (2) The Clerk shall direct a copy of this Order to petitioner, to counsel for  
9 respondent, and to the Honorable James L. Robart.

10 DATED this 16th day of May, 2005.

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14 JAMES P. DONOHUE  
15 United States Magistrate Judge  
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